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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/640,822	08/17/2000	Heinrich Gers-Barlag	Bei 637- KGB	6834

7590 12/06/2002

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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 12/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/640,822

Applicant(s)

GERS-BARIAG ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 November 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

- 3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
- 4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
- 6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7.  For purposes of Appeal, the proposed amendment(s) a)  will not be entered or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

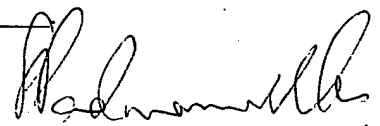
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

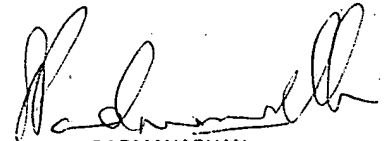
Claim(s) rejected: 16-30.

Claim(s) withdrawn from consideration: \_\_\_\_\_

- 8.  The proposed drawing correction filed on \_\_\_\_\_ is a)  approved or b)  disapproved by the Examiner.
- 9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 10.  Other: \_\_\_\_\_

  
SREENI PADMANABHAN  
PRIMARY EXAMINER 12/5/12

Continuation of 5. does NOT place the application in condition for allowance because: a) the 103 arguments are maintained for reasons of record in the Office Action mailed 10/15/02, Paper No. 19; b) Applicant argues, "The applicants' previously argues that 'The examiner appeared to acknowledge that Fanger et al. does not teach the inclusion of at least one modified phyllosilicate pigment particle which have amphiphilic character.' The examiner's response in the final rejection did not refute this statement and as such there is no prima facie case for obviousness using the Fanger et al. and Msika et al. references in combination". This argument is not persuasive. The Examiner respectfully points out that the instant rejection is a 103 obviousness rejection, not a 102 anticipation rejection. Thus, the primary reference, Fanger et al., is not relied upon to teach all the limitations of the instant claims. Furthermore, the Examiner respectfully points out that in the Office Action of 6/17/02, Paper No. 17, the Examiner stated that Fanger did not teach preferred modified hectorites. However, Fanger does teach hectorites, i.e. bentonite. Applicant argues that Fanger does not teach "a preparation which simultaneously has an oil phase which comprises. . . AND at most 0.5% by weight. . . of one or more emulsifiers". This argument is not persuasive. The Examiner respectfully points out that the reference is relied upon for its teachings as a whole and in the instant case, the reference teaches both an oil phase comprising 10-70% of fatty and/or wax components which melt above a temperature of 40C and at most 0.5% of one or more emulsifiers. Applicant argues, "The passage referred to by the examiner is for an W/O lipodispersion. This is not the same as a W/O emulsion". This argument is not persuasive. The Examiner has included dictionary definitions of the terms "emulsion" and "dispersion", wherein it is taught that an emulsion is a dispersion. Applicant argues that there is no motivation to add the quaternium 14 or 18 of Msika et al. to the composition of Fanger. This argument is not persuasive. The Examiner respectfully points out that Fanger and Msika are both directed to cosmetic compositions that are preferably in water-in-oil emulsion form. Fanger teaches that his composition can be in the form of a gel and further teaches aluminum silicates, such as bentonite, which is a hectorite, as thickeners. Msika teaches montmorillonites of the bentone type, such as quaternium 14, 18 hectorite, as gelling agents. Thus, one of skill in the cosmetic art would have been motivated to teach the quaternium 14, 18 hectorite of Msika as the gelling agents of Fanger. Applicant argues, "if the examiner was relying on Msika et al. only for the teaching of hectorites, then there was never a basis for establishing that the combination of Fanger et al. and Msika et al. would result in the applicants claimed preparations which have at most 0.5% by weight of an emulsifier or that the preparation is emulsifier free". This argument is not persuasive. For the reasons stated above and in the previous Office Action, the Examiner respectfully points out that the primary reference, Fanger teaches the emulsifier limitations, and thus, the secondary reference, Msika et al. was merely relied upon to teach the preferred hectorites and methods of preparing emulsions.

  
SREENI PADMANABHAN  
PRIMARY EXAMINER

12/1/02